



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Combustion Equipment Co., Inc.

File: B-228291

Date: December 24, 1987

DIGEST

An extension of the bid opening date is reasonable where it is made for the purpose of enhancing competition because only one bid had been received shortly before the time set for bid opening and another potential bidder had requested but not received a copy of the solicitation.

DECISION

Combustion Equipment Co., Inc. protests the award of a contract by the Naval Facilities Engineering Command for a natural gas conversion of a boiler under invitation for bids (IFB) No. N62474-84-B-4708. Combustion challenges the Navy's extension of the bid opening date.

We deny the protest.

The Navy issued the solicitation on August 10, 1987, with bid opening scheduled for 2:30 p.m. on September 11, 1987. By 11:00 a.m. on September 11, only Combustion had submitted a bid. About the same time, Riley Corporation called the Navy and stated that it had requested a bid package on August 18 and many times after that, but had not received it until the morning of bid opening. The Navy verified Riley's request, along with the fact that the Navy had not sent the solicitation package to Riley until September 8.

Because only one bid had been received, and because the Navy was at fault for not sending Riley the bid package despite Riley's repeated requests, the contracting officer decided to extend the bid opening to 2:30 p.m. on September 15. The Navy issued and mailed an amendment to that effect on September 11. Combustion learned of the amendment when it called the Navy shortly after the original bid opening time on September 11. Its bid remained unopened until the extended bid opening date, when it was opened along with three additional bids received by that date.

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Combustion contends that the Navy violated several Federal Acquisition Regulation (FAR) provision when it postponed the bid opening, and as a result only Combustion's bid, the sole bid received on the original bid opening date, should be considered. The protester claims that the postponement was a resolicitation and therefore, under FAR, 48 C.F.R. § 14-202-1 (1986), the Navy should have allowed 30 days for bidders to respond.

The mere extension of the bid opening date--with no change in any of the terms, conditions or specifications such that would warrant cancellation of the original solicitation--is not a resolicitation as that term is generally understood. Under Combustion's theory, every amendment to a solicitation that the agency considered to warrant an extension of the time set for bid opening would be considered a cancellation and resolicitation of the requirement, requiring 30 days for bidders to respond. Such a result is clearly not contemplated by the governing regulation, see FAR, 48 C.F.R. § 14.208, since the government clearly could not conduct its business within a reasonable time if that were required. Moreover, while the amendment extending the bid opening date made no changes in the scope of work, the total bid preparation period in fact exceeded 30 days. We find no violation of the cited regulation by the Navy and no merit to this argument.

Combustion also argues that the Navy failed to comply with FAR, 48 C.F.R. § 14-208, regarding amendment of bids, and FAR, 48 C.F.R. § 14.402-3, regarding postponement of openings. The protester claims that under § 14.402-3, an agency may extend bid openings only under the circumstances described in that regulation, which, we agree, do not apply in this case. We disagree, however, with Combustion's interpretation that bid openings may be postponed only in those circumstances; the language of the regulation is not restrictive because it does not limit postponements only to those two circumstances delineated in § 14.402-3. A principal purpose of the regulation and the primary concern of our bid protest process is to ensure that competition in the procurement of goods and services for the government is enhanced rather than restricted. Thus, where an extension (or postponement) of the bid opening date is made for the purpose of increasing competition, our Office simply has no basis for objection. See Tolina Construction Co., B-213028, Feb. 28, 1984, 84-1 CPD ¶ 244.

For the same reason, we reject Combustion's argument regarding FAR, 48 C.F.R. § 14.208. Here, Combustion argues that the Navy has not claimed to have publicly posted the determination to postpone the opening or to have notified

the other bidders of the postponement before amendment, as required. Aside from the fact that Combustion offers no evidence that the Navy did not comply with the posting requirements, Combustion clearly was not prejudiced by any potential lack of a posting of the extension. Combustion knew of the amendment shortly after it was issued because of its telephone call to the Navy office shortly after the originally scheduled bid opening. In addition, the Navy issued the amendment only a few hours before the original bid opening time, and the regulation requires an agency to notify bidders before such an amendment only if it is practical. Given the circumstance, it was probably not practical to notify bidders beforehand.

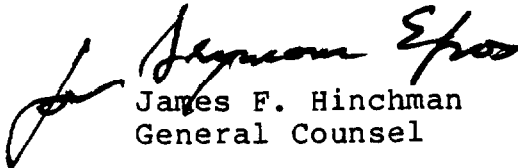
Combustion further complains of the alleged efforts by the Navy to ensure that Riley acknowledged the amendment, and notes that since, notwithstanding these alleged efforts, Riley returned the amendment in its bid without acknowledging it, Riley's bid cannot be accepted. That is not so. The amendment only extended the bid opening; it did not have any impact on price, quantity, quality, or delivery. Accordingly, Riley's failure to acknowledge it may be waived as a minor informality. Berbes Trailer Co., B-213762, Feb. 28, 1984, 84-1 CPD ¶ 250. FAR, 48 C.F.R. § 14.405(d)(2).

Combustion also argues that if the Navy wanted to extend the opening date, it should have extended it for a longer period so bidders would have had more time to recalculate their bids. Combustion claims that it had more time, it would have known of a supplier's different pricing method in time to lower its bid. Combustion states that the time was insufficient because Combustion was busy preparing other bids. We have held that the decision as to an appropriate bid preparation period lies within the discretion of the contracting officer. R&E Electronics, Inc., B-223723, Sept. 8, 1986, 86-2 CPD ¶ 273. Combustion's bid price was not exposed prior to the extended bid date and, like other prospective bidders, Combustion had the advantage of the additional time to consider its bid. It could have reconsidered its bid or reconfirmed its suppliers' pricing had it chosen to do so. That it did not make that effort because of other business circumstances was a business judgment that is not the responsibility of the contracting officer. We, therefore, find no merit to this basis for protest.

We conclude that the Navy acted properly by postponing the opening, since it avoided a potential violation of the statutory requirement for full and open competition. Had the Navy done otherwise, it would have denied Riley an opportunity to compete after Riley had made several reasonable attempts to obtain the bid documents from the Navy.

See Catamount Construction, Inc., B-225498, Apr. 3, 1987,
87-1 CPD ¶ 374.

The protest is denied.


James F. Hinchman
General Counsel